



Hilton H. Howell, Jr.
Gray Television, Inc.
President and CEO

October 21, 2013

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Notice of *Ex Parte* Communication in GN Docket No. 12-268

Dear Ms. Dortch:

Gray Television, Inc (“Gray”) submits this letter in support of a broad interpretation of the flexible use waiver provision of the Spectrum Act as articulated in the Comments filed with the FCC by the Sinclair Broadcast Group, Inc. in GN Docket No. 12-268 and as amplified in Sinclair’s *ex parte* filing of September 4, 2013. In particular, Gray urges the Commission to implement the Spectrum Act in such a way that broadcasters willing to forego the collection of repacking funds from the government would be able to use technologies other than the currently approved generation of ATSC and have the same flexibility afforded to Part 25 licensees. Such waivers should be granted to broadcasters prior to any incentive auction, should be available to all stations whether they are facing repacking or not and should be provided in a streamlined and timely FCC process.

Gray is a publicly traded company that owns and operates television stations in 31 television markets broadcasting nearly 90 distinct channels of programming. Gray’s stations include 23 number-one rated local news operations as well as 22 CBS affiliates, 11 NBC affiliates, 8 ABC affiliates and 5 FOX affiliates. Gray is a broadcaster that intends to continue broadcasting to its local communities but understands fully well the challenges, both competitive and technological, facing the industry and threatening the tremendous local service that Gray and others provide on a local, community basis.

Gray has reviewed Sinclair’s proposal for flexible use waivers with great interest. Gray has a strong reputation for technological innovation in its newsrooms and production capacities, and it believes that the television industry would benefit if Sinclair, Gray and other leaders had the freedom to innovate further in the free-over-the-air television service. Innovation comes in many forms and television broadcasters should have the maximum flexibility to upgrade their

technical facilities and improve their service offerings in order to provide ever-improving service to the public.

While Gray typically serves smaller markets than does Sinclair, Gray believes that flexible service rules and use of different transmission standards would allow television stations in all market sizes to better serve their local communities. The goal should be to put local viewers first, and it is local service that differentiates broadcasters from all other providers of video that offer no local news or public affairs programming.

Gray believes that Section 6402(b)(4)(B) of the Spectrum Act gives the FCC broad discretion to grant flexible use waivers to broadcast stations that agree to forego reimbursement of costs from the incentive auction relocation fund. Flexible use waivers, if available and sought by a significant number of licensees, could greatly reduce claims on the auction repacking fund while giving participating stations flexibility to improve service. The waivers could also help the FCC by avoiding possible litigation over the adequacy of reimbursements.

We agree with Sinclair that the waivers will be of little value to anyone if they are not sought by and granted to a large number of licensees. A few stations volunteering to forego repacking costs will not make a material dent in repacking reimbursements. And the potential service improvements simply will not materialize if the waivers are granted to isolated, individual stations, selected arbitrarily based on a repacking plan that will not be known until after the auction closes. No broadcaster is likely to plan or pay for *meaningful* service improvements arising from flexible use waivers granted to a handful of stations chosen at random by the FCC.

Gray particularly likes the idea of a thoughtfully defined “standard” waiver so that broadcasters can evaluate the risk/opportunity tradeoffs in advance of any auction. Broadcasters will need time to undertake these evaluations and they will cost money. Gray believes a standard waiver should be defined and announced well in advance of the reverse auction; it should be available immediately to any broadcast station that seeks it; and, it should not be conditioned on the auction outcome.

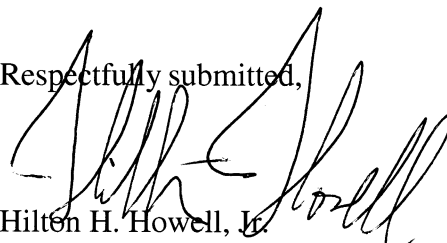
Waivers will not be meaningful unless they provide a path for a more general service upgrade across a critical mass of television stations. The waivers should be available to all stations, including UHF stations not in the prospectively cleared bands and VHF stations as well. Congress intended the Spectrum Act to foster the development of new and innovative services as well as to improve core, legacy services. The FCC should promote this goal as far as it can within its authority. We note the FCC does not require express Congressional authority to grant waivers in the first place. Through Section 6402(b)(4)(B) Congress has encouraged the FCC to use its waiver power to advance the public interest goals expressed in the Spectrum Act: innovation through flexible use service rules.

Although Gray believes a pre-auction standard waiver offers the best opportunity to benefit the auction and the public, we believe the Spectrum Act requires the FCC to also accept post-auction a la carte waivers from stations that will be repacked.

Finally, the FCC should be considering a new technical standard for the television industry. The flexible use waivers authorized by Congress provide a path for Gray and other industry leaders to begin planning for long-term service improvements without waiting for formal FCC processes to conclude, but they are not a substitute for a thorough review of television's technical standards.

We also emphasize that flexible use waivers contemplate more than a change in the television broadcast technical standard, and the standard waiver should provide more flexibility than would otherwise flow from a new standard.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Hilton H. Howell, Jr.', written over the 'Respectfully submitted,' text.

Hilton H. Howell, Jr.
President and Chief Executive Officer

cc via email: Dorann Bunkin, dorann.bunkin@fcc.gov
Alison Neplokh, alison.neplokh@fcc.gov
John Gabrysch, john.gabrysch@fcc.gov
Martha Heller, martha.heller@fcc.gov
Mary Margaret Jackson, marymargaret.jackson@fcc.gov
Kevin Harding, kevin.harding@fcc.gov
Evan Morris, evan.morris@fcc.gov
Gary Epstein, gary.epstein@fcc.gov
Edward Smith, edward.smith@fcc.gov
William Scher, william.scher@fcc.gov